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CIVIL AND POLITICAL RIGHTS INCLUDING THE QUESTION OF INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Human rights in the administration of justice, in particular of children and juveniles in detention

Report of the Secretary-General

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I. INTRODUCTION

1. In its resolution 2000/39, the Commission on Human Rights requested the Secretary-General to submit a report to the Commission at its fifty-eighth session on practical measures for the implementation of the international standards in the field of human rights in the administration of justice, in particular regarding rebuilding and strengthening structures and capacities for the administration of justice in post-conflict situations, and in juvenile justice, as well as the role of technical assistance of the United Nations system in this regard (para. 20). The present report is submitted in accordance with that request.

II. ADMINISTRATION OF JUSTICE

A. Relevant activities of the United Nations human rights mechanisms

1. Human rights treaty bodies

2. Many concluding observations on government reports adopted by treaty bodies and most of the views on individual communications adopted by the Human Rights Committee, the Committee on the Elimination of Racial Discrimination (CERD) and the Committee against Torture (CAT), as well as conclusions of CAT on inquiries under article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, are directly relevant to the administration of justice. Detailed information on relevant activities of the Committee on the Rights of the Child is contained elsewhere in this report. In this regard, it should be noted that treaty bodies are considering the establishment of follow-up procedures to their recommendations, in collaboration with special procedures mandate holders and United Nations organs and agencies and national institutions. Once in place, the procedures will assist national authorities in efforts to increase human rights protections, including in regard to the administration of justice. At present, to monitor the implementation of its own decisions and views on individual communications, the Human Rights Committee has appointed every two years since 1990 a Special Rapporteur for the follow-up on Views. Another measure taken in the field of individual recourse procedures that affects the administration of justice is the practice developed by both the Human Rights Committee and the Committee against Torture to request the State concerned to take interim measures to avoid possible irreparable damage to the persons who claim to be victims of an alleged violation.

3. Finally, it should be mentioned that the secretariat will assist treaty bodies in establishing follow-up procedures for the implementation of their decisions within its programme to strengthen support to human rights bodies and organs from 2002 to 2004.

2. Special procedures

4. The reports, urgent appeals and field missions of the working groups, special rapporteurs and representatives and independent experts of the Commission on Human Rights alert the international community to serious human rights violations, including failures and deficiencies in the administration of justice. The observations, conclusions and recommendations contained in their reports point out structural problems within the human rights area, including the areas of the administration of justice, the judiciary and related questions, such as impunity. The

Working Group on Enforced or Involuntary Disappearances emphasized in a recent report that, "[i]mpunity is one of the main causes - probably the root cause - of enforced disappearances and at the same time one of the major obstacles to clarifying past cases" (E/CN.4/2001/68, para. 124).

5. The Working Group on Arbitrary Detention stated that, "[t]he Group shares the views of the Commission on Human Rights concerning the need to put an end to impunity for the most serious human rights violations" (E/CN.4/2001/14, para. 74).

6. The Special Rapporteur on the independence of judges and lawyers noted that, "[j]udicial accountability is becoming an issue of importance in several countries, often leading to tension between the Government and the judiciary .... This tension between judicial independence and judicial accountability needs to be addressed to provide certain parameters so that judicial independence is not undermined. Standards may need to be formulated to guide a sound system for accountability." He added that, "[r]esources permitting, the Special Rapporteur intends to address this issue in the next two years with the assistance of some experts." Lastly, he concludes that he intends "to focus greater attention on promoting judicial integrity and accountability which will strengthen judicial independence and public confidence in the judiciary" (E/CN.4/2001/65, para. 28).

7. In his report to the General Assembly, the Special Rapporteur on the question of torture noted that, "the single most important factor in the proliferation and continuation of torture is the persistence of impunity, be it of a de jure or de facto nature" (A/56/156, para. 26).

8. Lastly, the Special Rapporteur on extrajudicial, summary or arbitrary executions pointed out that, "[t]he most systematic and alarming situations of impunity occur in countries where court decisions are flatly overruled and ignored by the executive authorities .... In some cases, impunity for human rights violations may also be the result of lack of governance, when a weak and under-resourced judiciary is incapable of working in an independent manner". The Special Rapporteur added that, "[t]here are serious deficiencies in the investigative methods of a number of countries. The investigative authorities lack capacity and forensic support. Institutional support and technical assistance may in part help to address this problem, but these efforts can only be successful if they are accompanied by strong mechanisms to ensure that the independence of the judiciary is supported by an efficient legal system (E/CN.4/2001/9, para. 61). In the Special Rapporteur' s opinion, "[f]irm measures to bring an end to impunity are fundamental to all sustainable and effective strategies for human rights protection and promotion .... The increasing difficulties in securing justice alienate the people from the State and may drive them to take the law in their own hands, resulting in a further erosion of the justice system and a vicious circle of violence and retaliation" (ibid., para. 56).

B. Office of the High Commissioner for Human Rights

9. Support for the administration of justice is one of the main areas of assistance provided by the Office of the High Commissioner for Human Rights (OHCHR) through its technical cooperation programme. Under the programme, technical advice and assistance, including training in the application of the relevant international human rights standards, is provided to a wide range of national partners active in the administration of justice. These include the

judiciary, the police, prison officials, prosecutors, legal aid programmes, law societies and bar associations, university law faculties, paralegal programmes, and concerned NGOs and other civil society organizations. OHCHR field offices, when they are present, take the lead in designing and delivering a targeted programme of assistance to local partners involved in the justice system. In an increasing number of cases, OHCHR works closely with other United Nations agencies, programmes and departments supporting Governments in the administration of justice. The following is an illustrative description of some recent and current assistance provided by OHCHR in various regions, with an emphasis on post-conflict situations, showing the wide variety of available support for the administration of justice to requesting States.

1. Europe

10. During the reporting period, the OHCHR office in Croatia implemented a number of training seminars in support of the administration of justice. These included: training courses for police on human rights standards with a focus on criminal investigations, held in cooperation with the Ministry of the Interior; training courses for judges, lawyers and prosecutors, with a focus on the protection of women's rights, held in cooperation with the Ministry of Justice and the Croatian Law Centre; a university summer course and follow-up seminar on human rights for law students: organized with the Croatian Law Centre and the faculties of law and political science of the universities of Zagreb, Osijek, Split and Rijeka.

11. Relevant activities of the OHCHR field office in the Federal Republic of Yugoslavia, including the sub-offices in Podgorica (Montenegro) and Pristina (Kosovo), have included participation in working groups and workshops on police reform strategies and programmes. In cooperation with the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe, OHCHR-Belgrade analysed conditions in prisons and participated in the development and implementation of reform programmes aimed at bringing prison conditions and personnel training up to international standards. The Podgorica sub-office provided training assistance on treatment of prisoners; standards of conduct of law enforcement officials, including the use of force and firearms; the role of lawyers and prosecutors in court and the independence of the judiciary. The Pristina sub-office engaged in many relevant activities, including: the monitoring of trials in the courts administered by the United Nations Mission in Kosovo (UNMIK), particularly those involving Serbs, juveniles and other vulnerable populations; monitoring conditions of detention in facilities run by UNMIK and the international security force (KFOR); participating in various rule of law-related working groups developing legislation and administrative procedures, including those regarding juvenile justice and access to defence counsel; and participating in the oversight body of the Kosovo Judicial Institute.

2. Latin America

12. In Latin America, a number of relevant initiatives have been undertaken at the subregional level. For example, OHCHR organized and conducted in Montevideo a subregional workshop on the "Application of international human rights standards by national courts" for the Southern Common Market (MERCOSUR) countries and Bolivia and Chile from 22 to 25 October 2001, which included representatives of States and national human rights institutions, regional organizations and NGOs. In May 2001, OHCHR signed a new technical cooperation

project with the Andean Commission of Jurists, one of the main aims of which is support in the area of the administration of justice in the Andean region. In November 2001, a workshop for directors and professors of law schools of the Andean region was conducted in Lima, aimed at assisting the law schools in the elaboration of their human rights curricula. Finally, the OHCHR field office in Colombia continues to carry out numerous monitoring, advice and assistance activities that concern the administration of justice.

3. Africa

13. The administration of justice is the focus of much of the work being carried out by the seven OHCHR field presences in Africa, as well as by the several human rights presences organized by either the Department of Peacekeeping Operations or the Department of Political Affairs of the Secretariat. For example, the activities of the OHCHR Burundi office are based on three main programmes: human rights training for the gendarmerie, magistrates, registrars, police from the office of the investigating judge and prison officials; assistance to the judiciary aimed at combating impunity and strengthening the rule of law; and support to the Ministry of Justice, particularly in the area of legal reform. Similarly, the OHCHR field office in Kinshasha has organized seminars on the administration of justice in cooperation with the Minister for Human Rights, the Minister for Justice and the United Nations Development Programme (UNDP). Such seminars have taken place in the capital as well as in Goma, where OHCHR has a sub-office.

14. Additionally, there are OHCHR technical cooperation projects in several other African countries, most of which contain a focus on the administration of justice. In Chad, for example, OHCHR and UNDP supported the creation of a documentation centre at the Constitutional Court and the Supreme Court of Justice. During the reporting period, the OHCHR technical cooperation project in Madagascar has held training courses for lawyers and judges, prison officers and senior police officials.

4. Asia

15. The Office of the High Commissioner for Human Rights in Cambodia (COHCHR) carries out many activities relating to the administration of justice. Under its programme of support to the law-making process, for example, COHCHR has offered expert comments on draft laws or legislative bills in critical areas affecting the administration of justice. These draft bills include the draft Criminal Procedure Code, the draft Penal Code, the draft Law on Magistrates and the draft Amendment to the Law on the Supreme Council of the Magistracy. COHCHR also promotes civil society participation in the law-making process by facilitating a working group of legal experts and local stakeholders, such as NGOs, to have their inputs in the law-making process. COHCHR has also conducted, in cooperation with national and international NGOs, two law drafting training courses in order to impart legal drafting skills.

16. Under its Judicial Mentor Programme, COHCHR has provided technical assistance to various courts of Cambodia through legal experts. Assistance has been provided to the Supreme Court, the Appeal Court and 15 provincial courts so far. On-the-spot assistance is provided by the mentors who have had experience in court practice and a considerable amount of knowledge in human rights laws. The office has also supported the Ministry of Justice and the courts in

organizing annual review meetings of judges and periodic meetings of judges and court clerks to share experiences and address the problems of court management and the judicial system. The office has prepared law compilations, containing updated laws and legal instruments applicable in Cambodia, in both Khmer and English. These compilations have proved extremely useful not only for the courts but for parliamentarians, government offices and NGOs also. Judicial education and training materials are under preparation by COHCHR and will be tested in the field. Pocket guidebooks on human rights and the text of international human rights instruments are provided on request for courts and police as well.

17. Finally, COHCHR has supported the Office of the General Prosecutor of the Appeal Court to hold quarterly meetings of public prosecutors in order to identify issues confronted by public prosecutors and make recommendations for addressing those problems. COHCHR has supported the Cambodian Bar Association in publishing its periodic law journal and organizing meetings for analyses and discussions of leading court cases.

18. Other relevant activities in the Asia region have included: human rights training for police, civilian police, judges and lawyers in East Timor in cooperation with the Department of Peacekeeping Operations; design of an access to justice project in the Philippines in close cooperation with UNDP; and an ongoing technical cooperation project with China focused on integrating human rights into the police training curriculum at the provincial level.

III. CHILDREN AND JUVENILES IN DETENTION

A. Committee on the Rights of the Child

19. The Committee on the Rights of the Child was established in 1991 to monitor the progress made by States parties in implementing the rights in the Convention on the Rights of the Child. Since 1993, the Committee has considered the initial and periodic reports of 145 States parties to the Convention and has adopted concluding observations pursuant to their consideration, including specific recommendations relevant to the question of juvenile justice. In these concluding observations, the Committee has in a large majority of cases advised States parties to seek technical assistance in an effort to develop capacities to effectively implement the rights of the child. In particular, the Committee has suggested that States seek assistance in the area of juvenile justice from OHCHR, the United Nations Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF, through the United Nations Coordination Panel on Technical Advice and Assistance on Juvenile Justice.

20. During the period under consideration, the Committee continued to pay particular attention to the human rights of children in conflict with the law, and in particular to their rights within the administration of justice, in its examination of States parties' reports. During its twenty-third to twenty-eighth sessions, held in Geneva between January 2000 and October 2001, the Committee examined 54 reports. In the consideration of these reports, the Committee identified a broad range of issues regarding the administration of justice. Issues of concern that have been most commonly raised by the Committee within the context of the consideration of the 54 reports considered included the following:

(a) The fact that in a large number of States penal law is not fully compatible with the provisions and principles of the Convention;

(b) The absence or insufficient number of juvenile courts and specialized juvenile judges, psychologists, probation officers and social workers;

(c) The persistence of discriminatory attitudes and measures against some groups of children within the administration of justice, including against boys belonging to indigenous or minority groups, those living in poverty, and those which have dropped out of the educational system;

(d) The absence or inadequacy of mechanisms to collect disaggregated (e.g. by age, sex, origin, etc.) data relating to children in conflict with the law, such as arrest, disposition, detention and other statistics;

(e) The low minimum ages for criminal responsibility;

(f) The low age of majority for criminal responsibility which foresee the possibility for ordinary courts to consider persons below 18 years old under adult jurisdiction;

(g) The fact that arrest, detention and imprisonment of children is not systematically used only as a measure of last resort and for the shortest appropriate period of time;

(h) The weak measures of protection for children in conflict with the law with regard to torture or other cruel, inhuman or degrading treatment or punishment; and the fact that in many countries the Committee has identified such patterns of child rights violations;

(i) The poor conditions of detention, including overcrowding and very poor sanitary conditions;

(j) The fact that in many States children deprived of liberty are not separated from adults;

(k) The absence or inadequate provision of education, health and other basic social services for children living in detention;

(l) The poor consideration given to the specific needs of girls in conflict with the law;

(m) The weak or lax monitoring mechanisms within police and detention centres and the rare establishment of efficient individual complaint mechanisms within these centres;

(n) The limited number of specialized qualified personnel working in detention centres for persons under 18 years old;

(o) The rare provision of assistance to children alleged as, accused of, or recognized as having infringed penal law, especially with regard to legal and other appropriate assistance and, when necessary, to the free assistance of an interpreter;

(p) The abusive use of (often lengthy) pre-trial detention and the conditions therein;

(q) The lengthy delays in adjudication and the failure to guarantee prompt decisions;

(r) The weak respect for the right to challenge the legality of deprivation of liberty;

(s) The generally limited use of measures not resorting to judicial proceedings dealing with children alleged as, accused of, or recognized as having infringed penal law;

(t) Insufficient legal protection and human and financial resources allocated to the rights to physical and psychological recovery and social reintegration for children having infringed penal law.

21. In addition, the Committee has identified in some of the reporting States the following issues of grave concern:

(a) The absence of an integrated system of laws, procedures, authorities and institutions specifically applicable to children;

(b) The incompatibility of domestic traditional systems of justice (e.g. customary or religious laws) with the principles and provisions of the Convention and other international standards;

(c) Sanctions that foresee the imposition of capital punishment for offences committed by persons when they were below 18 years of age;

(d) Sanctions that foresee the imposition of life imprisonment without possibility of release for offences committed by persons when they were below 18 years of age;

(e) The use of solitary confinement;

(f) The use of corporal punishment, such as flogging or whipping, as a sanction under penal law;

(g) The lack of information regarding children living in very small States who are, owing to lack of facilities, detained in a neighbouring State;

(h) the arrest and detention of children in relation to status offences (e.g. vagrancy laws), who should instead receive special protection from the State like other children deprived of a family environment.

22. During its twenty-fifth session (18 September-6 October 2000), the Committee held a discussion day on 22 September on "State violence against children". One of the two working groups established for the meeting focused on "Violence against children in the context of 'law and public order' concerns". A full set of recommendations was adopted following this discussion day (see CRC/C/100, para. 688).

23. The Committee further adopted, in October 2001, guidelines regarding the initial reports to be submitted by States parties on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which will enter into force on 12 February 2002. In its guidelines, the Committee requests States parties to the Optional Protocol to submit information on, inter alia, "the criminal liability of children for crimes they may have committed during their stay with armed forces or groups and the judicial procedure applicable, as well as safeguards to ensure that the rights of the child are respected" (CRC/OP/AC/1, para. 14 (f)).

B. Office of the High Commissioner for Human Rights

24. Since the fifty-sixth session of the Commission, the Office of the High Commissioner for Human Rights has been involved in several initiatives concerning the administration of juvenile justice, notably a project in the Philippines and another in Uganda.

25. In January 1995, the Committee on the Rights of the Child considered the initial report of the Philippines. Noting the Government's firm commitment to the promotion and protection of the rights of the child, the Committee recommended that the Philippines seek assistance from OHCHR to undertake a comprehensive reform of the juvenile justice system. Accordingly, the High Commissioner for Human Rights, the Government and the representative of the United Nations Children's Fund (UNICEF) in the Philippines signed a project document for a two-year period in December 1999. The project is expected to be completed by September 2002.

26. The long-term objective of the project is to enhance the protection of the rights of the child within the juvenile justice system. The project provides assistance for: developing juvenile justice legislation in conformity with international standards; elaborating internal procedures for professionals dealing with children in conflict with the law; training public authorities to promote the best interests of children, including by creating specialized materials for training-of-trainers courses; and launching an information campaign to raise public awareness concerning the rights of the children in conflict with the law.

27. The activities of the project fall under a broader project called "A comprehensive system of justice for children", which was included in the Fifth Master Plan of Operations agreed between the Government and UNICEF and signed on 29 September 1998. The Philippine Council for the Welfare of Children (CWC) is the government counterpart. Local academic centres and NGOs are being subcontracted to implement selected activities.

28. The following could be considered major direct achievements of the technical cooperation project so far: the Master Plan of Operations for the Implementation of the Fifth Country Programme for Children and Women in the Philippines (1999-2003), agreed by UNICEF and the Government of the Philippines, included for the first time the area of juvenile

justice, the Plan incorporated the major findings of the project formulation mission, that is the areas of action (legislative development, training of major actors and public awareness), as well as the identification of the main "pillars" for a comprehensive juvenile justice system (police, prosecutors, public defenders, judiciary and corrections).

29. A CWC task force is the counterpart for the implementation of this project. The project contributed to strengthening an existing "juvenile justice" task force which previously mainly focused on the child as a victim. The project also opened the task force to the representatives of the identified main pillars of the juvenile justice system. As a result, the Philippines Judicial Academy has become a major partner.

30. In 1997, the Committee on the Rights of the Child considered the initial report of Uganda and recommended, inter alia, that the administration of juvenile justice be reformed in light of international standards and norms and that specific training be given to all professionals involved. At two meetings of the Coordination Panel on Technical Advice and Assistance on Juvenile Justice (1998 and 2000), Uganda was identified as one of six countries in which United Nations agencies and bodies, together with NGOs, could coordinate their efforts to strengthen the juvenile justice system.

31. Within the framework of the Panel, the Office of the High Commissioner for Human Rights organized from 23 to 26 October 2000 in Jinja, a training and strategy development workshop on the administration of juvenile justice in Uganda.

C. UNICEF

32. Juvenile justice is a growing area for UNICEF. By the end of 2001, 75 per cent of its country offices were involved in juvenile justice projects. UNICEF undertakes many projects on juvenile justice in cooperation with other organizations including OHCHR, UNDP, the United Nations Centre for International Crime Prevention (CICP), WHO and the International Federation of Red Cross and Red Crescent Societies. UNICEF has produced informal guidelines for its country offices designed to give focus to UNICEF country projects, as well as ensure that country projects conform to a human rights framework.

33. For the prevention of juvenile delinquency, UNICEF encourages its country offices to avoid setting up projects on juvenile delinquency itself but rather on the avoidance of delinquency through the promotion of childcare in areas such as health, education, sanitation and so on. The basis of this approach is that UNICEF believes that the best way to avoid juvenile delinquency is through ensuring adequate promotion and protection of children's rights.

34. UNICEF's main entry point for working in the area of juvenile justice is the problem of children deprived of their liberty. UNICEF has sponsored a study, *Children Deprived of their Liberty. Rights and Realities*,[1] which estimated that 1 million children were deprived of their liberty throughout the world. UNICEF has since set the reduction of this number as a priority, and has selected three main strategies.

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[1] Geert Cappelaere and Anne Grandjean, *Enfants privés de liberté. Droits et réalités*, Editions Jeunesse et Droit, Liège, Belgium, 2000.

35. First, UNICEF has adopted strategies encouraging decriminalization and diversion. Strategies on decriminalization look at how children are deprived of their liberty. UNICEF has discovered that in fact many of those children deprived of their liberty have never committed a crime, but in fact are street children, vagrants, children used by adults to commit a crime, unaccompanied refugee children and so on. Strategies on diversion examine ways to avoid children going through the judicial system.

36. Second, UNICEF has adopted strategies on restorative justice. UNICEF is offering assistance to its counterpart by examining traditional mechanisms for child justice which accord with the promotion and protection of children's rights. Such mechanisms include, for example, the arbitration of a conflict by a tribal elder using a consultative process including the victim, the young offenders, as well as their families and other relevant parties. Traditional forms of justice still exist in many countries, although they are often neglected as viable alternatives to official justice systems.

37. Third, UNICEF has adopted strategies on alternative options to judicial sanctions other than the deprivation of liberty. This is a significant aspect of the work of UNICEF as many of its counterparts are not aware of options other than the deprivation of liberty. Such options include, for example, supervision orders or community service orders.

38. UNICEF has been undertaking specific projects in the area of juvenile justice in post-conflict situations. A significant number of UNICEF offices in post-conflict areas undertake projects in the area of juvenile justice, including in Rwanda, Kosovo, Sierra Leone, East Timor and Somalia. The UNICEF International Research Centre in Florence organized a seminar on "Juvenile justice in post-conflict situations" from 23 to 25 May 2001. UNICEF is also actively involved in guaranteeing a child rights focus on the agenda and in the activities of the International Criminal Court and other national and international justice mechanisms dealing with war crimes, genocide and other crimes against humanity.

D. Coordination Panel on Technical Advice and Assistance in Juvenile Justice

39. The Coordination Panel on Technical Advice and Assistance in Juvenile Justice was established pursuant to Economic and Social Council resolution 1997/30. The members of the Panel are UNDP, UNICEF, OHCHR, CICP, the Committee on the Rights of the Child and the International Network on Juvenile Justice, an umbrella international NGO. The objectives of the Panel are to enhance, coordinate and strengthen technical cooperation in the area of juvenile justice. Recently, OHCHR presented to other members of the Panel the preliminary proposal for an international expert workshop on juvenile justice which would focus on three areas: access to accurate and comprehensive data and other information with regard to the administration of juvenile justice, perceptions relative to juvenile justice and raising awareness of the situation of children implicated in juvenile justice, including children in conflict with the law.